(2)

No. 01-665

In the Supreme Court of the United States

RODNEY LEVAKE,

Petitioner,

v.

INDEPENDENT SCHOOL DISTRICT NO. 656, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED:

In Minnesota, the Minnesota Legislature has vested local school boards with the care, management and control of the school district, including prescribing the curriculum. Petitioner LeVake, a tenth grade biology teacher, was reassigned by Respondent Independent School District No. 656 to teach ninth grade introduction to physical science when he made it clear that he would not teach the required tenth grade biology course curriculum in the manner established by the School Board. The following question is presented:

Does LeVake, a teacher at a public secondary school, have a constitutional right to decide and to control the curricular decisions for his classroom?

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STATUTES INVOLVED

Minn. Stat. § 123B.09, subd. 1. Boards of independent school districts.

Subdivision 1. School board membership. The care, management, and control of independent districts is vested in a board of directors, to be known as the school board. The term of office of a member shall be four years commencing on the first Monday in January and until a successor qualifies. The membership of the board shall consist of six elected directors together with such ex officio member as may be provided by law. The board may submit to the electors at any school election the question whether the board shall consist of seven members. If a majority of those voting on the proposition favor a seven-member board, a seventh member shall be elected at the next election of directors for a four-year term and thereafter the board shall consist of seven members.

Those districts with a seven-member board may submit to the electors at any school election at least 150 days before the next election of three members of the board the question whether the board shall consist of six members. If a majority of those voting on the proposition favor a six-member board instead of a seven-member board, two members instead of three members shall be elected at the next election of the board of directors and thereafter the board shall consist of six members.

Minn. Stat. § 120B.11. School district process

Subdivision 1. Definitions. For the purposes of this section and section 120B.10, the following terms have the meanings given them.

(a) "Instruction" means methods of providing learning experiences that enables a student to meet graduation standards.

(b) "Curriculum" means written plans for providing students with learning experiences that lead to knowledge, skills, and positive attitudes.

Subd. 2. Adopting policies. (a) A school board shall adopt annually a written policy that includes the following:

(1) district goals for instruction and curriculum;

(2) a process for evaluating each student's progress toward meeting graduation standards and identifying the strengths and weaknesses of instruction and curriculum affecting students' progress;

(3) a system for periodically reviewing all instructions and curriculum;

(4) a plan for improving instruction and curriculum; and

(5) an instruction plan that includes education effectiveness processes developed under section 122A.625 and integrates instructions, curriculum, and technology.

Subd. 3. Instruction and curriculum advisory committee. Each school board shall establish an instruction and curriculum advisory committee to ensure active community participation in all phases of planning and improving the instruction and curriculum affecting state graduation standards. A district advisory committee, to the extent possible, shall reflect the diversity of the district and its learning sites, and shall include teachers, parents, support staff, pupils, and other community residents. The district may

establish building teams as subcommittees of the district advisory committee under subdivision 4. The district advisory committee shall recommend to the school board districtwide education standards, assessments, and program evaluations. Learning sites may expand upon district evaluations of instruction, curriculum, assessments, or programs. Whenever possible, parents and other community residents shall comprise at least two-thirds of advisory committee members.

Subd. 4. Building team. A school may establish a building team to develop and implement an education effectiveness plan to improve instruction and curriculum. The team shall advise the board and the advisory committee about developing an instruction and curriculum improvement plan that aligns curriculum, assessment of student progress in meeting state graduation standards, and instruction.

Subd. 5. Report. (a) By October 1 of each year, the school board shall use standard statewide reporting procedures the commissioner develops and adopt a report that includes the following:

(1) student performance goals for meeting state graduation standards adopted for that year;

(2) results of local assessment data, and any additional test data;

(3) the annual school district improvement plans;

(4) information about district and learning site progress in realizing previously adopted improvement plans; and

(5) the amount and type of revenue attributed to each education site as defined in section 123B.04.

(b) The school board shall publish the report in the local newspaper with the largest circulation in the district or by mail. The board shall make a copy of the report available to the public for inspection. The board shall send a copy of the report to the commissioner of children, families, and learning by October 15 of each year.

(c) The title of the report shall contain the name and number of the school district and read "Annual Report on Curriculum, Instruction, and Student Performance." The report must include at least the following information about advisory committee membership:

(1) the name of each committee member and the date when that member's term expires;

(2) the method and criteria the school board uses to select committee members; and

(3) the date by which a community resident must apply to next serve on the committee.

Subd. 6. Student evaluation. The school board annually shall provide high school graduates or GED recipients who receive a diploma or its equivalent from the school district with an opportunity to report to the board the following:

(1) the quality of district instruction, curriculum, and services;

(2) the quality of district delivery of instruction, curriculum, and services;

(3) the utility of district facilities; and

(4) the effectiveness of district administration.

Subd. 7. Periodic report. Each school district shall periodically ask affected constituencies about their level of satisfaction with school. The district shall include the results of this evaluation in the report required under subdivision 5.

Subd. 8. Biennial evaluation; assessment program. At least once every two years, the district report shall include an evaluation of the district testing programs, according to the following:

(1) written objectives of the assessment program;

(2) names of tests and grade levels tested;

(3) use of test results; and

(4) implementation of an assurance of mastery program.

STATEMENT OF THE CASE

A. Facts.

1. Minnesota Law on Curriculum Control and Development.

Under Minnesota law, the care, management and control of a school district is vested in the local school board. Minn. Stat. § 123B.09, subd. 1. By statute, school boards are charged with the duty of managing the schools of their district, including prescribing textbooks and courses of study. Id., subd. 8. School boards must annually adopt a written policy that includes the district's goals for instruction and curriculum; a system for periodically reviewing all instruction and curriculum; a plan for improving instruction and curriculum; and an instruction plan which integrates instruction, curriculum and technology. Minn. Stat. § 120B.11, subd. 2. "Curriculum" is defined by statute as written plans for providing students with learning experiences that lead to knowledge, skills and positive attitudes. Id., subd. 1(b). It is differentiated from "instruction" which is the method of providing learning experiences that enable a student to meet graduation standards. Id., subd. 1(1)(a).

Pursuant to Minn. Stat. § 120B.11, subd. 3, each school board must establish an instruction and curriculum advisory committee to ensure active community participation in all phases of planning and improving the instruction and curriculum affecting state graduation standards. The statute provides:

> A district advisory committee, to the extent possible, should reflect the diversity of the district and its learning sites, and shall include teachers, parents, support staff, pupils and

> other community residents. . . . Whenever possible, parents and other community residents shall comprise at least two-thirds of advisory committee members.

Id. Every school board is required to publish its "annual report on curriculum, instruction and student performance." Id., subd. 5.

In accord with Minnesota statutes, Respondent/Defendant Independent School District No. 656's (School District) School Board followed the statutorily mandated curriculum adoption process and adopted a curriculum. The School District teachers are part of both the curriculum adoption process and the curriculum review process. (Dixon Depo., pp. 20-21.)

As adopted by the School District's School Board, the teaching of evolution is a required part of the tenth grade biology curriculum. The required textbook is "Biology: Visualizing Life," which contains three chapters -- 9, 10 and 11 -- dealing with aspects of evolution. This textbook is the curriculum.[1] (Dixon Depo., p. 20.) In order to ensure that each student gets the same basic educational experience, this curriculum is required to be taught by each tenth grade biology teacher. (Dixon Depo., p. 24.) Accordingly, all tenth grade biology teachers must cover Chapter 9 while Chapters 10 and 11 were optional. With regard to Chapter 9,

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[1] In LeVake's appendix [App.] to his petition at 49a-52a, he presents to this Court only the course syllabus, not the curriculum. As LeVake is well aware, the syllabus is not part of the curriculum adopted by the School Board. (Defendants' Supplemental Response to Request for Production of Documents dated 4/4/00.)

the required lab activity is the "peppered moth." (Respondents' Appendix [A] 1.)

2. LeVake's Acceptance of Tenth Grade Biology Teaching Position.

LeVake is a teacher who has been employed by the School District since 1984. (LeVake Depo., p. 92.) In the summer of 1997, LeVake was offered the tenth grade biology teaching position because a teacher was retiring. (LeVake Depo., pp. 96-97.) Before accepting the position, LeVake discussed the course with Ken Hubert, co-chairman of the high school science department, and Respondent/Defendant Dave Johnson (Mr. Johnson), the high school principal. (LeVake Depo., p. 98.) LeVake also talked to Dave Wieber, the other co-chairman of the high school science department. (Wieber Depo., p. 9.) Mr. Wieber explained to LeVake what the biology curriculum entailed and that all teachers were expected to follow it. (Id.)

LeVake has acknowledged that evolution is the framework and foundation of modern biology. (LeVake Depo., pp. 45-48.) In LeVake's own post-secondary formal science education, LeVake was taught that evolution is the accepted framework of modern biology. (Id.) LeVake, however, has come to the conclusion that evolution is, for the most part, factually unsupportable. (LeVake Depo., p. 71.) LeVake acknowledges his criticisms of evolution were not presented to him in his own formal science educational training but are the result of his hobby of reading articles that are critical of evolution. (LeVake Depo., pp. 45-47.) LeVake was unaware of any public educational institution that

presents his criticisms of biology and evolution.[2] (LeVake Depo., p. 47.)

LeVake admits that he understood before he accepted the position that it was important that all tenth grade biology teachers cover the same materials and he knew that Chapter 9 was one of the required chapters to be taught. (LeVake Depo., p. 107.) LeVake admits that he also was told and that he understood that the theory of evolution was part of the Minnesota standards for education. (LeVake Depo., p. 64.) LeVake also knew that the required biology textbook more than likely did not contain the criticisms of evolution he wanted to teach. (LeVake Depo., pp. 100-01.) LeVake had reservations about teaching evolution. (LeVake Depo., pp. 64, 71.) Nonetheless, he accepted the position and did not tell anyone at the School District that he had such reservations about the curriculum. He did not approach the School District's curriculum advisory committee and present to it his concerns with the curriculum. (LeVake Depo., pp. 100-01.)

3. LeVake's Refusal to Teach Evolution.

Before LeVake taught each chapter of the biology textbook, LeVake would prepare an outline for that chapter.

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[2] One article has since described LeVake's criticisms as a repackaged version of creationism, noting that the books LeVake cites have been rejected by the National Academy of Sciences as well as by most prominent scientific publications. Rosenberg, Notes & Comments, Monkey Business and Unnatural Selection: Opening the Schoolhouse Door to Religion by Discrediting the Tenets of Darwinism, 9 Journal of Law & Policy 611, 682 (2001).

LeVake did not prepare outlines for the three chapters addressing evolution. (LeVake Depo., p. 108.)

In the spring, Mr. Hubert, a co-chair of the high school science department, observed that while both he and Mr. Koehler, the other tenth grade biology teacher, had already covered Chapter 9 on evolution, LeVake appeared to have skipped it. (Hubert Depo., p. 17.) Mr. Hubert was sure that LeVake was not teaching evolution. (Hubert Depo., p. 16.)

Mr. Hubert, as co-chairman of the science department, asked LeVake how he was going to handle the topic of evolution. (LeVake Depo., p. 64.) In response, LeVake admits that he told Mr. Hubert that he could not teach evolution. (Id.) LeVake described his conversation with Mr. Hubert as follows:

> Q. Okay. And what conversation did you have with [Mr. Hubert]?
>
> A. Well, the essence of the conversation was is that he asked me how I was going to handle the topic of evolution. His concern was it's kind of -- he wanted to be in line with the Minnesota stands [sic] for education in the federal goals 2000 things and they -- these particular standards had indicated that the student needs to have kind of a working knowledge of evolution and he wanted to know how I was going to handle that.
>
> Q. Okay. What did you tell him?

> A. Well, it was a -- it was about a half hour discussion but in essence I said to him I can't teach evolution. That's what I told him.

(LeVake Depo., p. 64.) Mr. Hubert recalled that LeVake told him he "will not teach something that's not true" and he would "rather go back to farming before he would ever do that."[3] (Hubert Depo., p. 26.)

LeVake, in the course of this litigation, has admitted he skipped Chapters 10 and 11. LeVake testified that all he had the students do with regard to Chapter 9 was the required lab on the peppered moth.[4] (LeVake Depo., p. 108.)

LeVake has subsequently offered as his explanation for his failure to teach evolution that the school year was short and that he did not have time to cover those chapters. (LeVake Depo., p. 116.) He later admitted that even though the school year was shortened by a month, each class period had been lengthened so that the seat time was almost identical to a regular school year. (Id.)

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[3] In his petition at page 5, LeVake now describes this conversation with Mr. Hubert as one in which he "expressed certain scientific doubts about aspects of Darwin's theory to fellow teacher Ken Hubert, in a private, casual conversation."

[4] LeVake later attempted to contradict his deposition testimony with his affidavit testimony. Under Minnesota law, such contradictory affidavit testimony is inadmissible. Banbury v. Omnitrition Int'l, Inc., 533 N.W.2d 876, 881 (Minn. Ct. App. 1995). In his appendix to his petition at 34a-38a, LeVake has presented to this Court only his inadmissible affidavit testimony.

Fatal to LeVake's explanation is testimony that at the beginning of the school year LeVake told the students he would not cover the chapters devoted to evolution. Mr. Benbrooks, a special education paraprofessional aide, had the duty of taking notes in LeVake's class for a handicapped special education student. He recalls LeVake told the class he would not cover human reproduction, because that was covered in another class the students were going to take, and that he was not going to cover the theory of evolution. According to Mr. Benbrooks, LeVake told the class he was "strongly against the theory of evolution" and had "strong beliefs that conflicted with evolution." (Benbrooks Aff.; A6.)

4. Meetings of School District Officials With LeVake and Decision to Reassign.

Based on Mr. Hubert's conversation with LeVake, Mr. Hubert approached Mr. Johnson, the high school principal, about his concern that LeVake was not teaching evolution. (Hubert Depo., pp. 16, 26.) He also informed Respondent/Defendant Cheryl Freund (Ms. Freund), who was responsible for the School District curriculum, of his concern. (Freund Depo., pp. 9, 23.) LeVake, Mr. Hubert, Ms. Freund and Mr. Johnson met on April 1, 1998. (Freund Depo., p. 34.) The purpose of the meeting was to discuss the School District's expectations on the teaching of the biology curriculum and how LeVake was teaching evolution to his biology class. (Freund Depo., p. 35; Johnson Depo., p. 26.)

At that meeting LeVake was told about their concern that LeVake was avoiding the subject of evolution and was not teaching the concept as required by the curriculum. (Johnson Depo., p. 26.) LeVake did not deny he was avoiding the subject of evolution with his students. (Johnson Depo., pp. 27-28.) LeVake then expressed his concerns about the theory

of evolution itself. (Johnson Depo., p. 28.) He talked about the moth and presented a series of theories which he felt refuted evolution. (Freund Depo., pp. 35-36.) LeVake stated that he enjoyed reading as much as possible on the weaknesses of evolution, that evolution was not a viable concept, that he had difficulty with the theory, and there were many students who were appreciative of knowing that they did not have to learn about evolution. (Freund Depo., pp. 37-40; Hubert Depo., p. 26.) LeVake stated he was teaching the weaknesses of evolution because that was what inspired him. (Id.)

LeVake admits that at that meeting he never discussed his religious beliefs. (LeVake Depo., p. 137.) Ms. Freund did ask LeVake if he mentioned the Bible or God in his class. LeVake acknowledged that Ms. Freund properly asked such questions to ensure he was not discussing religion in his class or trying to convert the students to his way of thinking. LeVake understood the reason for her questions and that they were appropriate. (LeVake Depo., pp. 140-41.)

LeVake, Mr. Johnson, Ms. Freund and Mr. Hubert met again on April 7, 1998, with the rest of the members of the science department. (LeVake Depo., p. 141.) Again, LeVake recalled there was no discussion of religion. (LeVake Depo., p. 143.) At that meeting, the science department members reaffirmed that evolution was a basic tenet of biology and part of the course curriculum for the tenth grade course. (Freund Depo., pp. 48-49; Johnson Depo., pp. 34-36.) The staff also emphasized that teaching evolution was part of the state graduation standards, the National Standards of the Teachers Association and the National Science Frameworks and thus required to be taught. Concern was also expressed about teaching pseudoscience. (Id.)

LeVake again told the group that he had concerns about teaching the theory of evolution and was adamant that

he wanted to teach what he perceived as its weaknesses. (Freund Depo., p. 49.) The responsibility for the decision to have LeVake reassigned rested with Mr. Johnson, the high school principal.[5] (Dixon Depo., p. 16.) No decision was made at that time to reassign LeVake. (Johnson Depo., p. 37.) Mr. Johnson instead asked LeVake to write a position paper outlining how LeVake would balance the teaching of evolution with his hobby of reading materials on the weaknesses of the theory. (Johnson Depo., pp. 35-36.)

LeVake did prepare a position paper outlining his position on teaching evolution. (App. 39a.) In his paper, LeVake states that the "process of evolution itself is not only impossible from a biochemical, anatomical, and physiological standpoint, but the theory of evolution has no evidence to show that it actually occurred." (Id. at 40a.) LeVake further states that he "will teach should the department decide that it is appropriate, the theory of evolution." He also states, however, that he will "accompany that treatment of evolution with an honest look at the difficulties and inconsistencies of the theory . . ." (Id. at 45a.)

Mr. Johnson has explained that the reason for asking LeVake to write a position paper was that he was trying to keep an open mind on the issue. (Johnson Depo., p. 36.) He recognized that science is an area of inquiry and one is always looking for new information and a new perspective on things.

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[5] LeVake, in his petition, has referred to statements made by Ms. Freund as to the reasons for his removal. As the Minnesota Court of Appeals recognized and as the record undisputedly established, Ms. Freund did not have the authority to reassign LeVake. Thus it was only Johnson's reason for reassigning LeVake and Dixon's reasons for supporting the decision that are germane. (App. 8a.)

He wanted to see how LeVake was going to balance the teaching of evolution with his stated hobby of looking at the inconsistencies in the theory. (Id.) From the reading of LeVake's position paper, Mr. Johnson was concerned not only with the amount of time that would be spent teaching evolution's inconsistencies as opposed to the theory itself but also the "spin or the emphasis or the importance" placed on the inconsistencies of the theory. Mr. Johnson was concerned that the theory of evolution was not going to receive adequate treatment as a unifying concept of biology versus an emphasis being placed on its purported inconsistencies. (Johnson Depo., pp. 57-58.) It was clear to Mr. Johnson that from "everything taken in total" that "Rod [LeVake] was not going to be able to hold back from teaching, spending a lot of time or putting undue emphasis on the inconsistencies of evolution." (Johnson Depo., pp. 58-59; Freund Depo., p. 63.) He reassigned LeVake to teach ninth grade introduction to physical science. (LeVake Depo., pp. 154-55.)

LeVake asked the School District's superintendent, Respondent/Defendant Keith Dixon (Mr. Dixon), to review Mr. Johnson's decision to reassign him. (LeVake Depo., pp. 155-56.) After reviewing LeVake's position paper and talking to participants in the meetings including LeVake, Mr. Dixon upheld Mr. Johnson's decision to reassign. (Dixon Depo., pp. 22, 26.) In his letter to LeVake affirming the reassignment decision, Mr. Dixon concurred that it was appropriate to reassign LeVake because LeVake clearly had demonstrated he could not teach the prescribed curriculum. (Dixon Depo., pp. 29-32.) Mr. Dixon in his letter to LeVake states:

> You asserted to me that you believe that you can teach the prescribed curriculum. However, in your explanation, you continue to justify why it is appropriate not to follow the

curriculum by pointing out the "discrepancies" that you believe exist. These "discrepancies" appear to be an itemization of your disagreement with the curriculum.

You suggest that these "discrepancies" can be passed on to students as "teaching them to think for themselves." Your explanation compels me to believe that you fundamentally differ with the commonly held principles of the curriculum as outlined. You have expressed not only fundamental and extensive conflicts with the curriculum, but more importantly, have made it clear that you cannot teach the curriculum. Rather, you propose to use the curriculum as a basis for pointing out and discussing both the extent of your disagreement with the curriculum and why it is that the curriculum is incorrect. Such an approach cannot be said to constitute teaching the Board of Education's approved curriculum. While you may be personally intrigued by the discrepancies which you perceive and want to pursue them on your own, the classroom is not the appropriate forum in which to do so.

In a public school system, the prescribed curriculum is the responsibility of the board of education. And, while curriculum development involves the staff, ultimately the Board has the responsibility for adopting the curriculum.

(A 8-9.)

5. Result of Reassignment.

LeVake has acknowledged that his reassignment to teach ninth grade science was not a demotion. (LeVake Depo., pp. 95-96.) There have been no changes to his teaching contract. LeVake admits he has not sustained any personal monetary loss nor any loss of benefits. He has not lost any seniority by his reassignment. (LeVake Depo., p. 169.) LeVake also admits that no one in the department has treated him differently because of his reassignment. (LeVake Depo., p. 170.)

B. LeVake's Lawsuit.

LeVake's sole intention in bringing this lawsuit is to "have my biology teaching job back," including the right to teach his criticisms of the theory of evolution. (LeVake Depo., pp. 167-68.) LeVake sued Respondents under 42 U.S.C. § 1983, alleging First Amendment violations of the Free Exercise of Religion Clause, the Establishment Clause and the Free Speech Clause. LeVake also alleged a violation of his academic freedom as a § 1983 cause of action. LeVake asserted that Respondents denied him due process under the federal and state Constitutions. He also alleged violation of his free speech rights and his right to freedom of conscience under the Minnesota State Constitution. (A 11.)

By summary judgment, the district court dismissed all of LeVake's claims with prejudice on the merits. (App. 12a.) LeVake then appealed to the Minnesota Court of Appeals, which affirmed the grant of summary judgment. (App. 2a.) In affirming, the Court of Appeals states:

> Because LeVake's position paper and his statement to Hubert made it clear that LeVake would not teach the required course curriculum

> in the manner established by the school board, LeVake has not presented any genuine issue of material fact regarding his free exercise, free speech, and due process claims. Thus, the district court did not err in granting respondents' motion for summary judgment.

(App. 11a.) The Minnesota Supreme Court denied LeVake's petition for further review. (App. 1a.)

REASONS WHY PETITION SHOULD BE DENIED

THE MINNESOTA COURTS' DISMISSAL OF LEVAKE'S ACTION IS IN ACCORD WITH THIS COURT'S DECISIONS.

LeVake has, until seeking certiorari by this Court, asserted that Respondents deprived him of his free exercise of religion. Before this Court LeVake now limits his constitutional claims to an alleged deprivation of his free speech/academic freedom rights and claims he is a victim of unconstitutional "viewpoint discrimination." LeVake argues that certiorari is appropriate by using bits and pieces of prior opinions of this Court unrelated to the real issue of this case and claims that the decision below "conflicts squarely with this Court's case law," reflects "conflicts in the lower courts on the issue of constitutional protection of classroom speech" and "conflicts with this Court's precedents regarding viewpoint discrimination."

The real issue in this case is LeVake's contention that he has a First Amendment right to establish the curriculum to be taught in his classroom and to teach what he wishes in accord with his own personal views. This Court has never recognized such a First Amendment right and the Minnesota Court of Appeals decision dismissing LeVake's constitutional

challenge is certainly not in conflict with this Court's decisions. LeVake's petition should be denied.

Cases to which LeVake cites that have referred to a First Amendment right of academic freedom have done so generally in terms of the institution, not the individual. For example, in Keyishian v. Board of Regents of University of State of of N.Y., 385 U.S. 589 (1967), this Court considered a renewed challenge to a New York statute and regulations which were designed "to prevent the appointment or retention of 'subversive' persons in state employment." Keyishian, 385 U.S. at 592. Keyishian involved the right of a professor to speak and associate in his capacity as a private citizen and thus is not germane to LeVake's claim. Moreover, in the course of reaching its conclusion that the provisions were unconstitutionally vague, this Court discussed the detrimental impact of such laws on academic freedom, which the Court characterized as "a special concern of the First Amendment." Id. at 603. The discussion by the Court indicates, however, that it was not focusing on the individual rights of teachers, but rather on the impact of the New York provisions on schools as institutions. The vice of the New York provisions was that they impinged upon the freedom of the University as an institution. See University of Pennsylvania v. E.E.O.C., 493 U.S. 182 (1990) (noting that Keyishian was a case involving governmental infringement on the right of an institution "to determine for itself on academic grounds who may teach").

Significantly, this Court has never recognized, even at the post-secondary level, that teachers possess a First Amendment right of academic freedom to determine for themselves the content of their course despite opportunities to do so. For example, in Epperson v. State of Arkansas, 393 U.S. 97 (1968), a case relied on by LeVake, the Court considered a challenge to a state law that prohibited the

teaching of evolution. The Court repeated its admonition in Keyishian that "the First Amendment does not tolerate laws that cast a pall of orthodoxy over the classroom." Epperson, 393 U.S. at 105 (quoting Keyishian, 385 U.S. at 603), but nevertheless declined to invalidate the statute on the basis that it infringed the teacher's right of academic freedom. Rather, the Court held that the provision violated the Establishment Clause. See id. at 106-09.

Almost 20 years later, the opportunity to create an individual First Amendment right of academic freedom again arose in Edwards v. Aguillard, 482 U.S. 578 (1987), another case involving limitations on a public school teacher's authority to teach evolution and a case cited by LeVake. In Edwards, a state statute required that instruction on evolution be accompanied by teaching on creation science. As in Epperson, this Court decided the case on Establishment Clause grounds. See Edwards, 482 U.S. at 596-97. This time, however, the court did not even mention academic freedom as a relevant consideration in holding the statute unconstitutional.

Instead, this Court has repeatedly held that "public education in our nation is committed to the control of state and local authorities." Epperson v. State of Arkansas, 393 U.S. at 104. As a result, local authorities have broad discretion in choosing a suitable curriculum. See Edwards, 482 U.S. at 583; Webster v. New Lenox School Dist. No. 122, 917 F.2d 1004, 1007 (7th Cir. 1990).

As this Court has held, the government as educator is subject to fewer strictures when operating an elementary and secondary school system than when operating an institution of higher learning. Cf. Tilton v. Richardson, 403 U.S. 672, 685-86 (1971) (opinion of Burger, C.J.). Elementary and secondary schools are inculcative in nature. Unlike

universities, "elementary and secondary schools are not designed for freewheeling inquiry; they are tailored to the teaching of basic skills and ideas." Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853, 915 (1982) (Rehnquist, J., dissenting).

No court has found that a public school teachers' First Amendment rights extend to choosing their own curriculum in contravention of school policy or dictates. Uerling, Academic Freedom in K-12 Education, 79 Neb. L. Rev. 956, 961 (2000). In disputes between school officials and teachers arising over "academic freedom" in the classroom, the courts have consistently supported the authority of school boards and administrators to exercise control over teachers and their teaching. As explained by the Seventh Circuit Court of Appeals:

> Parents have a vital interest in what their children are taught. Their representatives have in general prescribed a curriculum. There is a compelling state interest in the choice and adherence to a suitable curriculum for the benefit of our young citizens in society. It cannot be left to individual teachers to teach what they please.

Palmer v. Board of Education of the City of Chicago, 603 F.2d 1271, 1274 (7th Cir. 1979), cert. denied, 444 U.S. 1026 (1980).

Contrary to LeVake's contention, the First Amendment simply does not require school districts to abdicate control over public school curricula to the unfettered discretion of individual teachers. Kirkland v. Northside Indep. School Dist., 890 F.2d 794, 795 (5th Cir. 1989), cert. denied, 496 U.S. 926 (1990). As the Fifth Circuit stated in

Kirkland, 890 F.2d at 801-02, "public school teachers are not free, under the First Amendment, to arrogate control of curricula. Parents, administrators, and elected officials also have a legitimate role in the process of selecting material that will advance educational goals, a role that cannot lightly be assumed by teachers alone." Id. When an administrative process is established to compile and amend officially approved material with input from parents, administrators and educators, teachers must also respect that process. Id.

In Minnesota, the Legislature has vested local school boards with the authority to establish an appropriate curriculum. LeVake has disregarded the School District's administrative process and instead asserts that his personal preferences and viewpoints override the dictates of the School Board, its administrators and the parents of the School District. This case presents not a matter of public concern but rather an employment dispute. LeVake simply decided on his own not to follow the curriculum. LeVake did so even though he has acknowledged that evolution is the foundation of modern biology and has acknowledged that he is required to teach evolution both by the School District's curriculum as well as the graduation standards in Minnesota. Whereas all other tenth grade biology students in the School District were taught the foundations of modern biology, LeVake's tenth grade students, because of LeVake's actions, were not. When confronted with his failure to follow the curriculum, LeVake declared to the co-chairman of the science department, "I can't teach evolution." Since that declaration, LeVake has insisted on tailoring the curriculum so that his personal disagreement with the curriculum could be presented to his students as part of their course work.

If LeVake's argument that every public school teacher has a constitutional right to design, even in part, the content of his class were accepted, the nation's school boards would

be without the most basic authority to implement a uniform curriculum. This Court has never held that under the First Amendment, schools are the mere instruments of the advancement of the individual agendas of its teachers. As the Minnesota Court of Appeals correctly held, the School District did not violate any constitutional right in its reassignment of LeVake.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

LOMMEN, NELSON, COLE & STAGEBERG, P.A.
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80 South Eighth Street
Minneapolis, MN 55402
(612) 339-8131

Attorneys for Respondents

Dated: November 19, 2001

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New Registration Guide page:

BIOLOGY (Grades 10-11-12)

Year long course. Semester one (A) should be taken before semester two

Credit: one credit (1/2 credit per semester).

Course Description: Biology should be taken by all students. Biology, along with 9th grade science, gives the student the two science credits needed for graduation. Students taking only one science class in Senior High School should take Biology as a Junior. Students planning an taking chemistry and physics should take Biology as a sophomore or in summer school. Summer School Biology however, is taught at a faster pace than a year long course, therefore students in summer school should be average or above average ability in order to be successful. Daily media topics such as genetic engineering, gene splicing, micro-organisms, disease, pollution, heredity, selective breeding, cells, body chemistry, fitness, growth, reproduction, plants, food and medicine support the importance of taking this course in order to be literate in many aspects of science which are impacting our world today.

The learner will be able to:

1. relate topics studied in Biology to the following themes:

a. Energy and Life. Energy from the sun is passed through all life by the processes of photosynthesis, respiration and fermentation.

b. Scale and Structure. Living things are made of atoms organized into cells and increasing levels of complexity.

c. Stability. Living organisms maintain a constant internal balance.

d. Evolution. Natural selection and mutations are constantly causing changes in living things.

e. Patterns of Change. Cells grow and divide and organisms go through development in an orderly way because of instruction in the genetic material, the genes, which are made of DNA.

f. Interacting Systems. Living things interact with each other and their environment in complex and cooperative ways which are often upset by human activities.

2. use most of the following process skills:

observing	analyzing data	relating
inferring	evaluating	identifying
design experiments	demonstrate	collect data
measure	calculate	compare & contrast
classify	model	hypothesize
organize data	predict	state problems

3. use a variety of scientific instruments correctly and safely.

4. identify characteristics of living things.

5. know that science has limitations in solving society's problems.

6. examine opportunities available in science related careers.

7. identify beneficial and harmful effects of viruses and bacteria.

8. relate the dissection of an organism to human anatomy and physiology.

BIOLOGY: VISUALIZING LIFE

Approximate schedule of chapters by semester and quarter.

Semester one(A):
13 chapters plus 2 optional

1st quarter: Chapters 1, 2, 12, 13, 14, 3, 4
2nd quarter: Chapters 5, 6, 7, 8, 9, 15
Optional Chapters: 10, 11, and maybe 21, 22

Semester two (B)
12 chapters plus 4 chapters overview and 3 chapters optional
3rd quarter: Chapters 16, 17, 18, 19, 20 overview of 23, 24, 25, 26
4th quarter: Chapters 27, 28, 29, 30, 31, 32, 33, pig dissection,
Optional Chapters: 21, 22, 34

BIOLOGY	Visualizing Life	Lab Activities
Chp. 1	Stereomicroscope Compound Microscope	

Chp. 2	Acid Rain-Duckweed Microscope Living/Nonliving - see chapter 12 leaf litter lab pH activity
Chp. 12	Continue labs from Chp.2
Chp. 13	Succession - Railroad Tracks Comnpetition Seeds
Chp. 14	Daphnia?
Chp. 3	Microscopes Cell Labs pH
Chp. 4	Diffusion/Dialysis starch Agar Block Potato/Carrot Onion Slides/Mitosis
Chp. 5	Enzymes/Liver, Hydrogen Peroxide, pH Calories Chromatography Elodea? Spontaneous Generation Demo pH Demo
Chp. 6	Probability - Gambling, MS, low level Genetic Profile, p. 134 Meiosis - analogy 23 pair of shoes Pedigrees
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Chp. 8	DNA Fingerprinting

Chp. 9	Peppered Moth
Chp.15	Shark./Critter Keying Taxonomic keys

STATE OF MINNESOTA DISTRICT COURT

RICE COUNTY THIRD JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

Rodney LeVake,

Civil File No. CX-99-793

Plaintiff,

AFFIDAVIT OF JOEL BENBROOKS

v.

Independent School District #656;
Keith Dixon, Superintendent;
Dave Johnson, Principal; and
Cheryl Freund, Curriculum Director,

Defendants.

STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)

Joel Benbrooks, being first duly sworn upon oath, deposes and states as follows:

1. I was an employee of the Faribault school district during the 1997/98 school year. I was a special education paraprofessional aid. One of my duties was to take notes for one of the District's handicapped special education students. I attended Rodney LeVake's 1997/98 Faribault Senior High School Biology class as a note-taker for this student and was present for the class for both semesters as taught by Mr. LeVake that year.

2. I thought Mr. LeVake was an excellent teacher. I respect him, admire him a lot and consider him to be a friend. In the biology class and as a coach, I could tell that he cared about his students and noticed that he was well-liked by his students. Students wanted to be in his classes.

3. At the beginning of the first semester of the 1997/98 Biology class that Mr. LeVake taught, he reviewed with the class what he was and was not going to cover in the class. He told the class that he was not going to be covering human reproduction because that was going to be covered in another class the students were going to be taking. He also told the class that he was not going to cover the section on the theory of evolution. He said he was strongly against the theory of evolution. He explained that he had strong beliefs that conflicted with evolution. He also said that if he was not allowed to also cover the criticisms and weaknesses in the theory, then he was not going to cover evolution at all. To me, personally, I saw nothing wrong with this.

FURTHER YOUR AFFIANT SAYETH NOT.

/s/_____
Joel Benbrooks

Subscribed and sworn to before me
this 24th day of March, 2000.

/s/ Sharon L. Gillen_____
Notary Public

[Seal]

INDEPENDENT SCHOOL DISTRICT 656
FARIBAULT AREA PUBLIC SCHOOLS
P.O. BOX 618
2855 FIRST AVENUE N.W.
FARIBAULT, MINNESOTA 55021
(507) 334-2291

May 14, 1998

Mr. Rod LeVake
4400 240th Street West
Faribault, MN 55021

Dear Rod:

When we met on Tuesday, May 5, 1998, you asked me to set forth in writing the results of your appeal to me regarding your teaching assignment for the 1998-99 school year at Faribault Senior High School.

Mr. Dave Johnson, Principal, with Mrs. Cheryl Freund, Curriculum Director, informed you that you will be reassigned from Biology to another science position. You are requesting to remain in Biology.

As indicated by contract, Mr. Johnson has the responsibility to determine teaching assignment for all staff. I believe this to be a major responsibility of an administrator. The District has the authority to place staff in a position we believe is best for the staff member and results in the highest learning for students. Great care, thought, and consideration are given in these important decisions.

To reach their decision, Dave and Cheryl approached your assignment in the manner I have described. They have met with you personally, read your written views of this

matter, and reviewed documentation from state and national organizations regarding the content and teaching of Biology. I also appreciate your willingness to interact with them candidly regarding your feelings and views on this topic.

You asserted to me that you believe that you can teach the prescribed curriculum. However, in your explanation, you continue to justify why it is appropriate not to follow the curriculum by pointing out the "discrepancies" that you believe exist. These "discrepancies" appear to be an itemization of your disagreement with the curriculum.

You suggest that these "discrepancies" can be passed on to students as "teaching them to think for themselves." Your explanation compels me to believe that you fundamentally differ with the commonly held principles of the curriculum as outlined. You have expressed not only fundamental and extensive conflicts with the curriculum, but more importantly, have made it clear that you cannot teach the curriculum. Rather, you propose to use the curriculum as a basis for pointing out and discussing both the extent of your disagreement with the curriculum and why it is that the curriculum is incorrect. Such an approach cannot be said to constitute teaching the Board of Education's approved curriculum. While you may be personally intrigued by the discrepancies which you perceive and want to pursue them on your own, the classroom is not the appropriate forum in which to do so.

In a public school system, the prescribed curriculum is the responsibility of the Board of Education. And, while curriculum development involves the staff, ultimately, the Board has the responsibility for adopting the curriculum.

Therefore, I am in support of Mr. Dave Johnson's re-assignment for you.

Sincerely,

s/s

Keith M. Dixon
Superintendent

CC: Cheryl Freund, Executive Director, ESST
Dave Johnson, Principal, FSHS

STATE OF MINNESOTA DISTRICT COURT

RICE COUNTY THIRD JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

RODNEY LEVAKE

Plaintiff, COMPLAINT

v. CIVIL FILE N0. _____

INDEPENDENT SCHOOL DISTRICT 656, KEITH M. DIXON, SUPERINTENDENT, FARIBAULT SENIOR HIGH SCHOOL, DAVE JOHNSON, PRINCIPAL, CHERYL FREUND, CURRICULUM DIRECTOR

Defendants.

Plaintiff, Rodney LeVake, for his claim of relief against defendants herein, states and alleges as follows:

INTRODUCTION

1. Plaintiff, Rodney LeVake (hereafter "LeVake"), is a citizen of the United States and the State of Minnesota. He was at all relevant times employed by the defendant School District as a high school teacher at the Faribault Senior High School.

2. Defendant Independent School District 656 (hereafter "The District"), is a school district organized

pursuant to Minnesota Statute 123 B.02 with general charge of the business of the district including Faribault Senior High School.

3. Defendant, Keith M. Dixon (hereafter "Dixon" or "the Superintendent"), was at all relevant times the Superintendent of Schools for Independent School District 656. Defendant Dixon is sued individually and in his official capacity.

4. Defendant, Dave Johnson (hereafter "Johnson" or "the Principal"), was at all relevant times the Principal of Faribault Senior High School, Defendant Johnson is sued individually and in his official capacity.

5. Defendant, Cheryl Freund (hereafter "Freund"), was at all times relevant the Curriculum Director for the Faribault Senior High School. Defendant Freund is sued individually and in her official capacity.

6. Plaintiff, Rod LeVake, was employed by the District as a biology teacher in the 1997-98 academic year. LeVake was assigned to teach biology at the Faribault Senior High School.

7. LeVake is a 1977 graduate of St. John's University where he majored in natural science and social science. In 1984, he received his master's degree in Biology Education from Mankato State University. His assignment as a biology teacher at Faribault was the realization of his long-time career goal.

8. The textbook LeVake was assigned for his 10th grade Biology class was entitled *"Biology, Visualizing Life."* The book contains several chapters in which the theory of evolution is mentioned. Section 10.1 of the textbook, entitled

"Origin of Life," contains the following statement: "In principle, there care at least three ways life could have begun ... Extraterrestrial origin ... Creation ... Origin from nonliving matter."

9. LeVake holds the view that the teaching of evolution in high school should be accompanied by a critical examination of the scientific arguments and evidence both for and against the theory. He does not believe that belief in evolution as an unquestionable fact is or should be a requirement for teaching the subject of Biology. LeVake expressed this view to colleagues on the Faribault High School faculty at various times during the 1997-98 school year. At the same time, he made it clear that he was not interested in teaching creationism or creation science.

10. LeVake anticipated teaching a unit on evolution during the academic year. Because of a shortening of the school year LeVake's class never reached that section of the textbook.

11. On or about April 2,1998, at about 7:15 AM, with no prior notice, LeVake was summoned to a meeting with the chairman of the science department and defendants Freund and Johnson. The meeting consisted of a discussion of LeVake's views on the theory of evolution and how it should be taught. During this meeting, defendant Freund asked LeVake whether or not his students knew he was a Christian. Freund also asked LeVake whether he ever mentioned God or the Bible in his science class. Plaintiff responded that he did not.

12. Plaintiff's religious beliefs were well known to the defendants. For several years, plaintiff has been called upon to deliver a religious invocation at the high school

football banquet. He is active in his local church. He is known as a person of conservative religious views.

13. On April 7, 1998, LeVake was summoned to a meeting with the entire science department. Once again the discussion centered around LeVake's views on the theory of evolution and how it should be taught in high school. At the conclusion of this meeting, defendant Johnson asked LeVake to write a brief position paper on what he questioned about evolution and how he would teach the subject in the classroom.

14. On April 15, 1998, LeVake distributed to Freund, Johnson and other members of the science department his "A position paper on the teaching of evolution." (Exhibit A, attached)

15. Included in that paper were the following statements by LeVake: "I will teach, should the department decide that it is appropriate, the theory of evolution. I will also accompany that treatment of evolution with an honest look at the difficulties and inconsistencies of the theory without turning my class into a religious one."

16. On April 29, 1998, plaintiff had another meeting with defendants Freund and Johnson. The defendants told plaintiff that they had decided that he would no longer be assigned to teach biology at Faribault Senior High School but would be reassigned to another science teaching position.

17. On April 30, 1998, LeVake told defendant Johnson that he wished to appeal to defendant Dixon regarding the reassignment. LeVake met with Dixon on May 5, 1998. At that meeting LeVake asked Dixon to set forth in writing the results of his appeal.

18. On May 14, !998, defendant Dixon affirmed defendant Johnson's reassignment of LeVake. In a letter to LeVake of the same date, defendant Dixon stated "You . . . have made it clear that you cannot teach the curriculum." Dixon's letter completely ignored LeVake's repeated assertions in both his position paper and conversations that he could and would teach the theory of evolution if directed to do so.

19. Since the events described above, LeVake has been reassigned to a general science teaching position. Despite the fact that LeVake is the only member of the school's science department with a Masters degree in Biology Education, the defendants will not allow him to teach Biology.

20. Shortly before LeVake was dismissed as a biology teacher, defendant Freund spoke to a member of the school board and told the board member that LeVake had a deep internal conflict between his religious beliefs and teaching evolution. Freund told the board member that, because of this alleged conflict, the school would have to remove LeVake as a biology teacher. Freund made these statements despite knowing that LeVake had repeatedly assured her and other school officials that no such conflict existed, he could and would teach evolution, and that his religious beliefs would not in anyway interfere with his ability to teach evolution.

ALLEGATIONS OF LAW

21. The Constitutions of the United States and the State of Minnesota protect the rights of teachers to the free exercise of religion and freedom of conscience. U.S. Const. Amend. 1, 14; M.S.A. Const. Art. I § 16.

22. The Constitutions of the United States and the State of Minnesota protect the rights of teachers to freedom of speech and academic freedom. U.S. Const. Amend. 1, 14; M.S.A. Const. Art. 1 §3.

23. The Constitutions of the United States and the State of Minnesota prohibit the establishment of religion, U.S. Const. Amend 1, 14, and interference with liberty of conscience. M.S.A. Const. Art. I § 16.

24. The defendants, and each of them, are "persons" for purposes of the claims of this complaint, as that term is used in 42 U.S.C. § 1983,

25. All of the conduct of the defendants as set forth in this complaint constitutes conduct "under color of state law" as that phrase is used in 42 U.S.C. § 1983.

26. All of the actions of the defendants as set forth in this complaint were done pursuant to a state policy or practice.

27. The rights of plaintiff LeVake to free exercise of religion, freedom from discrimination in employment on the basis of his religion, freedom of speech, academic freedom and due process of law were clearly established at all relevant times.

28. The defendants, acting individually and in concert, and under color of state law are responsible for the decision to deprive the plaintiff of the aforementioned constitutional rights. This action is therefore brought against the defendants in their individual and official capacities.

29. The act of removing plaintiff from his position as biology teacher was done pursuant to a policy of the

District to exclude persons whose religious beliefs conflict with acceptance of evolution as an unquestionable fact from teaching biology. Said policy is in clear violation of the Establishment and Free Exercise Clauses of the First Amendment of the U.S. Constitution and Article 1, paragraph 16 of the Minnesota Constitution.

30. In addition, or in the alternative, the actions of the individual defendants, acting under color of state law, were done pursuant to the individual defendants' view that persons whose religious beliefs are perceived by those defendants to be in conflict with acceptance of evolution as an unquestionable fact should be excluded from teaching biology. Actions taken in furtherance of said view by persons acting under color or state law are in violation of the Establishment and Free Exercise Clauses of the First Amendment of the U.S. Constitution and Article 1, paragraph 16 of the Minnesota Constitution.

FIRST CAUSE OF ACTION
VIOLATION OF FREEDOM OF RELIGION

31. Plaintiff alleges and incorporates by reference all the preceding paragraphs of this complaint,

32. The defendants' removal of plaintiff from his position as biology teacher was based on plaintiff's religious beliefs and/or the defendants' perception of plaintiff's religious beliefs. Defendants' conduct therefore violated plaintiff's federal constitutional right to the Free Exercise of religion as guaranteed by the First and Fourteenth Amendments and protected by 42 U.S.C. § 1983, by placing an undue burden on plaintiffs exercise of his religion, by discriminating against him in terms, conditions and privileges of employment on the basis of his religion, and by singling

him out for disparate treatment on the basis of his religious beliefs.

33. Moreover, by conditioning plaintiff's ability to pursue his chosen profession on his adherence or non-adherence to certain religious or philosophical beliefs, the defendants' conduct violates the Establishment Clause of the First Amendment.

WHEREFORE, plaintiff demands judgment in accordance with the Prayer for Relief below.

SECOND CAUSE OF ACTION
VIOLATION OF FEDERAL FREE SPEECH RIGHTS

34 Plaintiff alleges and incorporates by reference all the preceding paragraphs of this complaint.

35. The defendants' conduct in removing plaintiff from his position as biology teacher because of his views on the theory of evolution, and particularly his past expression of those views violated plaintiff's federal constitutional right to freedom of speech as guaranteed by the First and Fourteenth Amendments and protected by 42 U.S.C. § 1983.

WHEREFORE, plaintiff demands judgment in accordance with the Prayer for Relief below.

THIRD CAUSE OF ACTION
VIOLATION OF ACADEMIC FREEDOM

36. Plaintiff alleges and incorporates by reference all the preceding paragraphs of this Complaint.

37. The defendants' conduct in removing plaintiff from his position as biology teacher because of his views on

the theory of evolution, his past expression of those views and his wish to express those views in the future in the classroom, violated plaintiff's federal constitutional right to academic freedom as guaranteed by the First and Fourteenth Amendments and protected by 42 U.S.C. § 1983.

WHEREFORE, plaintiff demands judgment in accordance with the Prayer for Relief below.

FOURTH CAUSE OF ACTION
VIOLATION OF STATE FREE SPEECH RIGHT

38. Plaintiff alleges and incorporates by reference all the preceding paragraphs of this complaint.

39. The defendants' conduct in removing plaintiff from his position as biology teacher because of his views on the theory of evolution, and his past expression of those views, violated plaintiff's right to freely speak, write and publish his sentiments on all subjects as guaranteed by Article 1, Section 3 of the Constitution of the State of Minnesota.

WHEREFORE, plaintiff demands judgment in accordance with the Prayer for Relief below.

FIFTH CAUSE OF ACTION
VIOLATION OF STATE RIGHT OF FREEDOM OF CONSCIENCE

40. Plaintiff alleges and incorporates by reference all the preceding paragraphs of this complaint.

41. The defendants' conduct in removing plaintiff from his position as biology teacher was based on plaintiff's religious beliefs and/or defendants' perception of plaintiff's religious beliefs. Defendants' conduct placed an undue burden

on plaintiff's exercise of his religion, discriminated against him in terms, conditions and privileges of employment on the basis of his religion, and singled him out for disparate treatment on the basis of his religious beliefs. Defendants' conduct thus violated plaintiff's right of freedom of conscience as guaranteed by Article 1, Section 16 of the Constitution of the State of Minnesota.

WHEREFORE, plaintiff demands judgment in accordance with the Prayer for Relief below.

SIXTH CAUSE OF ACTION
VIOLATION OF RIGHT OF DUE PROCESS

42. Plaintiff alleges and incorporates by reference all the preceding paragraphs of this Complaint.

43. The defendants' conduct in removing plaintiff from his position as a biology teacher was arbitrary, capricious, unreasonable, discriminatory and unlawful and deprived plaintiff of or interfered with, his rights as protected by the Due Process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution and Article 1, § 7 of the Constitution of the State of Minnesota as protected by 42 U.S.C. § 1983.

DAMAGES

44. As a direct and proximate result of the illegal and unconstitutional acts of the defendants, plaintiff has suffered and continues to suffer the loss of his federal and state constitutional rights to free exercise of religion, freedom of speech, academic freedom, freedom of conscience and due process of law. Plaintiff has been hindered and prevented by the defendants from pursuing his chosen career, has suffered

embarrassment and humiliation, anguish and anxiety which will continue unless the court grants the requested relief.

PRAYER FOR RELIEF

Based on the foregoing, plaintiff respectfully prays the Court to grant judgment as follows:

A. That the Court enter a declaratory judgment declaring that the District's policy, of excluding from biology teaching positions persons whose religious beliefs conflict with acceptance of evolution as an unquestionable fact, to be unconstitutional and illegal under the United States and Minnesota Constitution.

B. That the Court enter a declaratory judgment declaring the action of the defendants in removing plaintiff as biology teacher, to be illegal and unconstitutional.

C. That the Court order the defendants to forthwith restore the plaintiff to his former position of biology teacher.

D. That plaintiff receive compensatory damages in an amount in excess of $50,000.00.

E. That the Court award plaintiff the reasonable costs of this action.

F. That the Court award plaintiff reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

G. Such other relief as the Court deems just.

DEMAND FOR JURY TRIAL

Plaintiff, Rodney LeVake, demands a trial by jury on all issues so triable.

Dated this 24th day of May, 1999.

/s/
Francis J. Manion
AMERICAN CENTER
FOR LAW & JUSTICE -
MIDWEST
6375 New Hope Road
New Hope, Ky 40052
(502) 549-7020

/s/
Wayne B. Holstad
3535 Vadnais Center Dr.
St. Paul, MN 55110
(651) 490-9078
Bar #124461

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.21, subd. 2, to the party against whom the allegations in this pleading are asserted.

/s/
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